

CITY OF FAIRFIELD

RESOLUTION NO. 2017 - 177

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAIRFIELD AUTHORIZING  
THE CITY MANAGER TO EXECUTE A FUNDING AGREEMENT BETWEEN THE  
SOLANO TRANSPORTATION AUTHORITY AND THE CITY OF FAIRFIELD FOR  
THE GRANGE MIDDLE SCHOOL SAFE ROUTES TO SCHOOLS PROJECT**

**WHEREAS**, funding through the Congestion Management Air quality Program in the amount of \$260,000 has been made available to the City of Fairfield for improvements to intersection safety; and

**WHEREAS**, those funds have been identified to be used for safety improvements to two intersections on East Tabor Avenue adjacent to Grange Middle School; and

**WHEREAS**, the City of Fairfield is required to enter into a funding agreement with the Solano Transportation Authority prior to the receipt of those funds.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:**

Section 1. The City Manager is hereby authorized to execute on behalf of the City of Fairfield, a Funding Agreement between the Solano Transportation Authority, and the City of Fairfield for the Grange Middle School Safe Routes to Schools Project, which is in a form approved by the City Attorney.

**PASSED AND ADOPTED** this 18<sup>th</sup> day of July, 2017, by the following vote:

AYES: COUNCILMEMBERS: PRICE/TIMM/BERTANI/MOYNACCARO

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: Timm, Bertani

ABSTAIN: COUNCILMEMBERS: NONE

MAYOR

ATTEST

CITY CLERK  
pw

*Chris Hagg, Deputy*

*Nancy + Price*



**ONE BAY AREA GRANT ("OBAG") CYCLE 2 FUNDING AGREEMENT  
BETWEEN  
THE SOLANO TRANSPORTATION AUTHORITY  
AND  
THE CITY OF FAIRFIELD  
FOR THE GRANGE MIDDLE SCHOOL SAFE ROUTES TO SCHOOLS  
PROJECT**

**THIS ONE BAY AREA GRANT (OBAG) FUNDING AGREEMENT ("Agreement") is entered into as of September 27, 2017, 2017 between the SOLANO TRANSPORTATION AUTHORITY ("STA"), a joint powers authority organized under Government Code section 6500 et seq. consisting of the County of Solano and the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun, Vacaville and Vallejo, and the City of Fairfield ("City"), a municipal corporation. Unless identified, the public agencies may be commonly referred to individually as "Party" or collectively as "Parties".**

**RECITALS**

WHEREAS, STA was created in 1990 through a Joint Powers Agreement between the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville, Vallejo and the County of Solano to serve as the Congestion Management Agency (CMA) for Solano; and

WHEREAS, STA, as the CMA for the Solano area, partners with various transportation and planning agencies, such as the Metropolitan Transportation Commission (MTC) and Caltrans District 4 and is responsible for countywide transportation planning, programming transportation funds, managing and providing transportation programs and services, delivering transportation projects, and setting transportation priorities; and

WHEREAS, MTC has established the One Bay Area Grant (OBAG) funding program to integrate the Bay Area region's federal transportation program with California's climate law (Senate Bill 375, Steinberg, 2008) and the Sustainability Communities Strategy; and

WHEREAS, MTC has authorized CMAs to program OBAG Cycle 2 funds to projects that meet the eligibility requirements of any one of the following six transportation categories: 1) Local Streets and Roads Preservation, 2) Bicycle and Pedestrian Improvements, 3) Transportation for Livable Communities, 4) Safe Routes to Schools, 5) Priority Conservation Areas, and 6) CMA Planning Activities; and

WHEREAS, in order to qualify for OBAG Cycle 2 funds, a jurisdiction must satisfy the requirements of Resolution 4202, including having adopted a plan that complies with the California Complete Streets Act of 2008 as well have a general plan housing element adopted and certified by the State Department of Housing and Community Development for 2012-19 RHNA prior to January 31, 2017;

WHEREAS, project sponsors receiving OBAG Cycle 2 funds are required to adopt a resolution of local support prior to projects being programmed in the Transportation Improvement Plan (TIP);

WHEREAS, MTC has established the Project Selection Policies (“Policies”) to govern the use of OBAG Cycle 2 funds; and

WHEREAS, STA has issued a Call for Projects in accordance with the Policies and has determined that the City of Fairfield meets the requirements for OBAG Cycle 2 Funds.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the Parties agree:

### **Part I** **Description of Project**

The Project is defined as the Grange Middle School Safe Routes to Schools Project (“Project”), which consists of safety enhancements to two intersections with East Tabor Avenue in front of Grange Middle School including the installation of rectangular rapid flashing beacons and stamped and colored pavement in the crosswalk areas, and the replacement of ADA accessible ramps. The project improvements are limited to the intersection between Falcon Drive and East Tabor Avenue and the intersection between Blossom Avenue and East Tabor Avenue.

### **Part II** **Respective Roles and Responsibilities**

#### **A. City’s Role and Responsibilities.**

1. City agrees to deliver the Project as adopted in its submission to STA’s CMAQ and STP Call for Projects, dated August 25, 2016. City also agrees to meet the requirements of MTC Resolution No. 3606 which governs project delivery deadlines for all federal funding shown in the Transportation Improvement Program (TIP) for the Bay Area’s federally funded transportation projects, and MTC Resolution No. 4202 which requires jurisdictions to comply with Caltrans Highway Performance Monitoring System reporting requirements annually.
2. If the Project involves a bicycle component, the member agency must agree to install STA approved bicycle way-finding signage as part of the Project.
3. Any changes to Project scope, budget, or schedule must be approved by STA. Project scope changes must not result in a decrease to Project benefits. Any Project delivery milestones that are not met need to be reported to STA immediately.
4. As per MTC Resolution 3606, project sponsors are required to have their projects reviewed by the Solano Bicycle Advisory Committee prior to environmental clearance.
5. Project sponsors are required to provide quarterly Project updates to STA.

6. Any cost increases related to this Project are the sole responsibility of the Project sponsor.

## **B. STA's Role and Responsibilities.**

STA agrees to provide:

1. Assistance with programming and submittal of Project Transportation Improvement Program (TIP) reporting to MTC.
2. Review Project design and monitor implement of Project to ensure it is consistent with OBAG Cycle 2 guidelines.
3. Arrange for the Solano Bicycle Advisory Committee (BAC) to review Project for compliance with Complete Streets requirements.
4. Field review oversight and assistance with navigating Caltrans project delivery policies.

## **C. Anticipated Schedule.**

Time is of the essence with regard to this Project. Due to Project funding requirements, the Parties agree to the following schedule:

<b>Actions/Milestones</b>	<b>Date</b>
STA Board Approval	COMPLETED
OBAG Planning Requirements Met	COMPLETED
TIP Programming	7/31/2017
Field Review	3/1/2019
Request PE Authorization	N/A
Receive PE Authorization	N/A
Federal Environmental Type	CE
Technical Reports to Caltrans	6/1/2019
Environmental Circulation/Permits	8/1/2019
Environmental Adopted	10/1/2019
Final Design	5/1/2020
Request ROW Authorization	6/1/2020
ROW Certification	10/1/2020
Request CON Authorization	11/1/2020
Receive CON Authorization	1/1/2020
Advertise Date	3/15/2020
Contract Award Date	5/1/2020
Project Completion	8/1/2021
Project Closeout	12/1/2021

As outlined in STA's project delivery policies, failure to adhere to this Project delivery schedule may result in rescoping the Project, funding swaps or reprogramming of funding to other eligible projects.

#### **D. Mutual Responsibilities.**

1. Parties agree to abide by MTC Resolution No. 4035, incorporated into this Agreement as Exhibit A by this reference, and it's implementing instructions, as provided by MTC during the term of this Project.
2. The Parties agree to communicate information in a timely format and provide direction as needed so as to not impact the Project Schedule. To the extent that any Party is not performing its duties under this Agreement in such a manner as to impact either the schedule and/or Project funding, the Parties agree to meet and confer to resolve any dispute.

#### **Part III** **Funding**

STA has programmed OBAG Cycle 2 Funds in the amount of \$260,000 in FY 2019-20 for this Project. The OBAG Cycle 2 Funds programmed for this Project are held, and will be disbursed to City, by Caltrans. City will invoice Caltrans for payment in accordance with Caltrans standard invoicing practices. Caltrans will then reimburse City up to the maximum amount listed above.

As referenced in Part II Section A: Any cost increases related to this project are the sole responsibility of the City.

#### **Part IV** **General Terms and Conditions**

##### *A. Term of Agreement*

This Agreement shall remain in effect through the filing of the Notice of Completion on the Project or the completion of the reimbursement by Caltrans to the City, whichever is later, unless it is terminated or amended earlier as stipulated in this Agreement. This Agreement may also be terminated due to Project funding shortfalls or other unforeseen event(s), as mutually agreed to by the Parties. In the event of loss of funding, the Parties agree to work collaboratively to redirect the Project funds to other OBAG projects eligible for such funding.

##### *B. Indemnification*

###### *1. STA to indemnify City*

STA agrees to indemnify and release City, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as 'City'), from and against any and all claims, liability, or expense (including attorneys' fees and witness costs) arising from any negligent act or omission or willful misconduct of STA. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

###### *2. City to indemnify STA*

City agrees to indemnify and release the STA, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as 'STA') from and against any and all claims, liability or expense (including attorneys' fees and witness costs) arising from any negligent act or omission or willful misconduct of City. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

*3. Each Party to defend itself*

STA agrees to defend itself, and City agrees to defend itself, from any claim, action or proceeding arising out of the alleged negligent act or omission or willful misconduct of STA and City in the performance of this Agreement. In such cases, STA and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in subparagraph 5 below.

*4. Joint Defense*

Notwithstanding subparagraph 3 above, in cases where STA and City agree in writing to a joint defense, STA and City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the negligent act or omission or willful misconduct of City and STA in the performance of this Agreement. Joint defense counsel shall be selected by mutual agreement of STA and City. STA and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph 5 below. STA and City further agree that neither Party may bind the other to a settlement agreement without the written consent of both STA and City.

*5. Reimbursement and/or Reallocation*

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, STA and City may seek reimbursement and/or reallocation of defense costs (including attorney fees), settlement payments, judgments and awards, consistent with such comparative fault.

*C. Insurance*

1. Each Party agrees to maintain its status as a legally self-insured public entity for general, auto and professional liability insurance coverage with limits of no less than \$1,000,000 per occurrence and no less than twenty-five million dollars (\$25,000,000) aggregate. Each Party's insurance will be considered primary for all claims arising out of acts of that Party. Each Party agrees to endorse the other Party, its officials, employees and agents, using standard ISO endorsement No. CG2010 or its equivalent for general liability coverage. Each Party also agrees to require all consultant, contractors and subcontractors engaged to work on this Project to name the other Party as an additional insured as well.

2. Each Party will maintain Workers' Compensation as required by law for all its employees with limits not less than \$1,000,000 per occurrence. Neither Party's insurance shall be called upon to satisfy any claim for workers' compensation filed by an employee of the other Party. Each Party will provide the other with a Waiver of Subrogation endorsement for Workers Compensation. Each Party also agrees to require all consultants, contractors and

subcontractors engaged to work on this Project to carry the same Workers Compensation insurance limits and endorsements.

3. Each Party will require all consultants, contractors, and subcontractors engaged to work on this Project to carry insurance in levels commensurate with the exposure of the respective work provided by the consultant, contractor or subcontractor.

*D. No Waiver*

The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

*E. Assignability*

No Party to this Agreement shall assign or transfer any interest nor performing any duties or obligations, without the prior written consent of the other Parties, and any attempt by a Party to so assign or transfer this Agreement or any rights, duties or obligations arising shall be void and of no effect.

*F. Governing Law and Venue*

The construction and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the laws of California with venue residing in Solano County.

*G. Force Majeure*

No Party shall be liable or deemed in default for any delay or failure in performance under this Agreement or for any interruption of services, directly or indirectly, from acts of god, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Party.

*H. Notices*

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that a Party desires to give to the other Parties shall be addressed to the other Parties at the addresses set forth below. A Party may change its address by notifying the other Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

SOLANO TRANSPORTATION  
AUTHORITY  
Janet Adams, Director of Projects  
Solano Transportation Authority  
One Harbor Center, Suite 130  
Suisun City, CA 94585

CITY OF FAIRFIELD  
George Hicks, Director of Public Works  
City of Fairfield  
1000 Webster Street  
Fairfield, CA 94533

*I. Subcontracts*

Within the funds allocated by the Parties under this Agreement, any Party may be authorized to contract for any and all of the tasks necessary to undertake the Project or studies contemplated by this Agreement. Agencies must follow federal procedures in selecting consultants.

*J. Prior Agreements and Amendments*

This Agreement represents the entire agreement of the Parties regarding the matter described, and no representation, warranties, inducements or oral agreements have been made by the Parties except as expressly set forth in this Agreement. This Agreement may only be modified by a written amendment duly executed by the Parties.

*K. Severability*

If any provision or portion of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid such provision shall be severable and shall not impair the enforceability of any other provision of this Agreement.

*L. Compliance with all Laws*

The Parties shall observe and comply with all federal, state and local laws, ordinances, and codes including those of the Federal Highway Administration (FHWA) and Federal Transit Authority (FTA).

*M. Non-Discrimination Clause*

1. During performing this Agreement, the Parties and their subcontractors shall deny no benefits or privileges to any person on the basis of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation. Each Party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
2. The Parties shall comply with Title VI of the Civil Rights Act of 1964, the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated under it (Title 2, California Code of Regulations, section 7285.0, et seq.), Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement the foregoing, as such statutes and regulations may be amended from time to time.

*N. Access to Records and Retention*

All Parties, acting through their duly authorized representative, and any federal or state grantor agency providing all or part of the funding associated with this Agreement, the State Controller, the Comptroller General of the United States, and the duly authorized representatives of the Parties, shall have access to any books, documents, papers and records of any Party directly pertinent to the matter of this Agreement to make audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, the Parties shall maintain all required records for three years after final payment for any work associated with this Agreement, or after all pending matters are closed, whichever is later.

This Agreement was executed by the Parties on the day and year first written above.

SOLANO TRANSPORTATION AUTHORITY

By: Daryl K. Halls  
Daryl K. Halls, Executive Director

CITY OF FAIRFIELD

By: David A. White  
David A. White, City Manager *DKW*

By: Bernadette Cury  
STA Legal Counsel

Approved as to form:

By: Mark West  
City Attorney